

HOUSE BILL NO. 513

INTRODUCED BY D. FUCHS

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NITRATE TESTING REQUIREMENTS FOR SINGLE-FAMILY SEPTIC SYSTEMS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-316, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c) or (5)(d).

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

1 (10) "High-quality waters" means all state waters, except:

2 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications
3 established by the board's classification rules; and

4 (b) surface waters that:

5 (i) are not capable of supporting any one of the designated uses for their classification; or

6 (ii) have zero flow or surface expression for more than 270 days during most years.

7 (11) "Impaired water body" means a water body or stream segment for which sufficient credible
8 data shows that the water body or stream segment is failing to achieve compliance with applicable water
9 quality standards.

10 (12) "Industrial waste" means a waste substance from the process of business or industry or from
11 the development of any natural resource, together with any sewage that may be present.

12 (13) "Interested person" means a person who has a real property interest, a water right, or an
13 economic interest that is or may be directly and adversely affected by the department's preliminary
14 decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who
15 has requested authorization to degrade high-quality waters.

16 (14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated
17 to one of its existing or future nonpoint sources or to natural background sources.

18 (15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without
19 a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means
20 the maximum change that can occur from the best practicable condition in a surface water without causing
21 a violation of the surface water quality standards.

22 (16) "Local department of health" means the staff, including health officers, employed by a county,
23 city, city-county, or district board of health.

24 (17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
25 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
26 thallium, and zinc.

27 (18) "Mixing zone" means an area established in a permit or final decision on nondegradation
28 issued by the department where water quality standards may be exceeded, subject to conditions that are
29 imposed by the department and that are consistent with the rules adopted by the board.

30 (19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,

1 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
2 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
3 waters.

4 (20) "Outstanding resource waters" means:

5 (a) state surface waters located wholly within the boundaries of areas designated as national parks
6 or national wilderness areas as of October 1, 1995; or

7 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316
8 and approved by the legislature.

9 (21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
10 point source.

11 (22) "Parameter" means a physical, biological, or chemical property of state water when a value
12 of that property affects the quality of the state water.

13 (23) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
14 partnership, individual, or other entity and includes persons resident in Canada.

15 (24) "Point source" means a discernible, confined, and discrete conveyance, including but not
16 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
17 or other floating craft, from which pollutants are or may be discharged.

18 (25) (a) "Pollution" means:

19 (i) contamination or other alteration of the physical, chemical, or biological properties of state
20 waters that exceeds that permitted by Montana water quality standards, including but not limited to
21 standards relating to change in temperature, taste, color, turbidity, or odor; or

22 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
23 other substance into state water that will or is likely to create a nuisance or render the waters harmful,
24 detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals,
25 birds, fish, or other wildlife.

26 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution
27 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
28 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not
29 considered pollution under this chapter.

30 (26) "Sewage" means water-carried waste products from residences, public buildings, institutions,

1 or other buildings, including discharge from human beings or animals, together with ground water
2 infiltration and surface water present.

3 (27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
4 other wastes to an ultimate disposal point.

5 (28) "Standard of performance" means a standard adopted by the board for the control of the
6 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through
7 application of the best available demonstrated control technology, processes, operating methods, or other
8 alternatives, including, when practicable, a standard permitting no discharge of pollutants.

9 (29) (a) "State waters" means a body of water, irrigation system, or drainage system, either
10 surface or underground.

11 (b) The term does not apply to:

12 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

13 (ii) irrigation waters or land application disposal waters when the waters are used up within the
14 irrigation or land application disposal system and the waters are not returned to state waters.

15 (30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or
16 in combination with narrative information, that supports a finding as to whether a water body is achieving
17 compliance with applicable water quality standards.

18 (31) "Threatened water body" means a water body or stream segment for which sufficient credible
19 data and calculated increases in loads show that the water body or stream segment is fully supporting its
20 designated uses but threatened for a particular designated use because of:

21 (a) proposed sources that are not subject to pollution prevention or control actions required by a
22 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation
23 practices; or

24 (b) documented adverse pollution trends.

25 (32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
26 for point sources and load allocations for both nonpoint sources and natural background sources
27 established at a level necessary to achieve compliance with applicable surface water quality standards.

28 (33) "Treatment works" means works, including sewage lagoons, installed for treating or holding
29 sewage, industrial wastes, or other wastes.

30 (34) "Waste load allocation" means the portion of a receiving water's loading capacity that is

1 allocated to one of its existing or future point sources.

2 (35) "Water quality protection practices" means those activities, prohibitions, maintenance
3 procedures, or other management practices applied to point and nonpoint sources designed to protect,
4 maintain, and improve the quality of state waters. Water quality protection practices include but are not
5 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
6 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
7 storage.

8 (36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted,
9 or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
10 ground water.

11 (37) "Watershed advisory group" means a group of individuals who wish to participate in an
12 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in
13 the development of TMDLs under 75-5-703, including those groups or individuals requested by the
14 department to participate in an advisory capacity as provided in 75-5-704."

15

16 **Section 2.** Section 75-5-301, MCA, is amended to read:

17 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of
18 80-15-201 and this chapter, the board shall:

19 (1) establish the classification of all state waters in accordance with their present and future most
20 beneficial uses, creating an appropriate classification for streams that, ~~due to~~ because of sporadic flow,
21 do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

22 (2) (a) formulate and adopt standards of water quality, giving consideration to the economics of
23 waste treatment and prevention. When rules are adopted regarding temporary standards, they must
24 conform with the requirements of 75-5-312.

25 (b) Standards adopted by the board must meet the following requirements:

26 (i) for carcinogens, the water quality standard for protection of human health must be the value
27 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed
28 1×10^{-3} in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at
29 a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant
30 level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the

1 standard for that carcinogen.

2 (ii) standards for the protection of aquatic life do not apply to ground water.

3 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted

4 by this chapter, revise established classifications of waters and adopted standards of water quality;

5 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
6 department be specifically identified and requiring that mixing zones have:

7 (a) the smallest practicable size;

8 (b) a minimum practicable effect on water uses; and

9 (c) definable boundaries;

10 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
11 limited to rules that:

12 (a) provide a procedure for department review and authorization of degradation;

13 (b) establish criteria for the following:

14 (i) determining important economic or social development; and

15 (ii) weighing the social and economic importance to the public of allowing the proposed project
16 against the cost to society associated with a loss of water quality;

17 (c) establish criteria for determining whether a proposed activity or class of activities, in addition
18 to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any
19 parameter in order that those activities are not required to undergo review under 75-5-303(3). These
20 criteria must be established in a manner that generally:

21 (i) equates significance with the potential for harm to human health, a beneficial use, or the
22 environment;

23 (ii) considers both the quantity and the strength of the pollutant;

24 (iii) considers the length of time that the degradation will occur;

25 (iv) considers the character of the pollutant so that greater significance is associated with
26 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
27 substances that are less harmful or less persistent.

28 (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant;

29 (i) from septic systems serving single-family residences that are located on 1-acre lots or larger;

30 or

(ii) if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

~~(i)(A)~~ 7.5 milligrams per liter from sources other than sewage;

~~(i)(B)~~ 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

~~(iii)(C)~~ 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or

~~(iv)(D)~~ 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 3. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure.

(1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; ~~or~~

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water; ~~or~~

(c) consider a petition based on increased nitrates if the increase is considered nonsignificant under 75-5-301(5)(d).

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does

not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

1 (ii) based on information available to the board from the environmental impact statement or
2 otherwise, approving the outstanding resource waters classification petition would cause significant
3 adverse environmental, social, or economic impacts.

4 (b) If the board denies the petition, it shall identify its reasons for petition denial.

5 (8) A rule classifying state waters as outstanding resource waters under this section may be
6 adopted but is not effective until approved by the legislature.

7 (9) The board may not postpone or deny an application for an authorization to degrade state
8 waters under 75-5-303 based on pending:

9 (a) board action on an outstanding resource water classification petition regarding those waters;

10 or

11 (b) legislative approval of board action designating those waters as outstanding resource waters."

12 - END -